

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MORGAN C. HUNTLEY

Plaintiff,

v.

VBIT TECHNOLOGIES CORP., VBIT
MINING LLC, ADVANCED MINING
GROUP, DANH CONG VO a/d/a/
DON VO, KATIE VO, SEAN TU, JIN
GAO, LILLIAN ZHAO, JOHN DOE
INDIVIDUALS 1-10, and ABC
COMPANIES 1-10,

Defendants.

Case No. 1:22-cv-01164-CFC-SRF

**OPENING BRIEF IN SUPPORT OF RENEWED MOTION
FOR LEAVE TO WITHDRAW AS COUNSEL**

BAYARD, P.A.
Brett M. McCartney (#5208)
Elizabeth A. Powers (#5522)
Ronald P. Golden III (#6254)
600 North King Street, Suite 400
Wilmington, Delaware 19801
(302) 655-5000
bmccartney@bayardlaw.com
epowers@bayardlaw.com
rgolden@bayardlaw.com
*Counsel for Defendants VBit
Technologies Corp. and VBit Mining
LLC*

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INTRODUCTION¹

Pursuant to the Court’s June 26, 2023 Oral Order (D.I. 93), Bayard P.A. (Delaware counsel) (herein after “Movant”) submits its Renewed Motion requesting leave from this Court to withdraw as counsel for Defendant Danh Cong Vo (“Mr. Vo”). The undersigned counsel cannot continue to represent Mr. Vo for professional responsibility reasons concerning Movant’s inability to communicate with Mr. Vo. Despite repeated attempts by lead counsel,² counsel have been unable to establish contact with Mr. Vo since February 8, 2023. (See Declaration of Milena Dolukhanyan (“Dolukhanyan Decl.”) served and filed concurrently herewith.) Counsel do not know Mr. Vo’s whereabouts, contact information other than the initial information received while engaging in representation, and because of this

¹ Bayard, P.A. sent a copy of the undersigned’s original Motion to Withdraw as Counsel (D.I. 64) along with the Opening Brief (D.I. 65), Declaration in Support of Motion to Withdraw (D.I. 66), and Amended District of Delaware Local Rule 7.1 Statement (D.I. 68) to Danh Cong Vo at kennyu77@gmail.com with a read receipt, as well as to Danh Cong Vo pursuant to District of Delaware Local Rule 83.7 by Certified Mail at the following address: 919 N. Front Street, Unit F Philadelphia, PA 19123 on May 12, 2023. (See, e.g., D.I. 7, 67.)

² Milena Dolukhanyan of Gartenberg Gelfand Dolukhanyan is lead counsel for Mr. Vo. Ms. Dolukhanyan is not yet admitted *pro hac vice* in this case. Given the instant motion, Ms. Dolukhanyan will not be moving to be admitted *pro hac vice* for Mr. Vo. Accordingly, for the purpose of this motion, local counsel and lead counsel are treated as one counsel for Mr. Vo.

lack of communication cannot continue their representation of Mr. Vo in accordance with the Rules of Professional Conduct³.

The undersigned counsel know of any succeeding attorney to take over representation of Mr. Vo nor do they know if Mr. Vo will proceed *pro se* in this matter should this Court grant this Motion. In the event this Court consents to the undersigned counsel's withdrawal, Mr. Vo could be afforded a reasonable time period to find new counsel. Pursuant to D. Del. LR 83.7, the undersigned have served a copy of this Motion by certified mail addressed to Mr. Vo's last known address at 919 N. Front Street, Unit F Philadelphia, PA 19123 on May 12, 2023. (See, e.g., D.I. 7, 67.) Counsel will serve any order granting permission to withdrawal on same.

In addition, a copy of this motion has been served electronically with a read receipt upon the last-known e-mail address of Mr. Vo at kennyu77@gmail.com and counsel will serve any order granting permission to withdrawal on same.

ARGUMENT

Local Rule 83.7 of this Court provides as follows:

An attorney may withdraw an appearance for a party without the Court's permission when such withdrawal will leave a member of the Bar of this Court appearing as counsel of record for the party. Otherwise, no appearance shall be withdrawn except by order on a motion duly noticed to each party and served on the

party client, at least 14 days before the motion is presented, by registered or certified mail addressed to the client's last known address.

To date, no other attorney has entered an appearance of counsel for Mr. Vo.

The Delaware Lawyers' Rules of Professional Conduct apply in proceedings before this Court and should also be considered in deciding motions to withdraw. *See, e.g., Sharp v. Verizon Delaware Inc.*, No. CIV.A. 11-1209-RGA-CJB, 2012 WL 6212615, at *2 (D. Del., Dec. 12, 2012) (applying Del. R. Prof'l C. 1.16.) The pertinent provision of Rule 1.16, entitled "Declining and Terminating Representation," provides that a lawyer may withdraw from representation of a client for seven enumerated reasons. In relevant part, Rule 1.16(b) states that a lawyer may withdraw from representing a client if, *inter alia*:

Withdrawal can be accomplished without material adverse effect on the interests of the client; [Rule 1.16(b)(1)] the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled; [Rule 1.16(b)(5)] . . . the representation . . . has been rendered unreasonably difficult by the client; or, [Rule 1.16(b)(6)] other good cause for withdrawal exists. [Rule 1.16(b)(7)].

Courts in this district have set out a list of similar factors to be considered in ruling upon a motion to withdraw, including: (1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may cause to the litigants; (3) the delay in the resolution of the case which would result from withdrawal; and (4) the effect of

withdrawal on the efficient administration of justice. *See Sharp*, 2012 WL 6212615, at *2.

In the instant matter, all of the relevant factors favor granting withdrawal.

First, despite repeated attempts, lead counsel has not heard back from Mr. Vo since February 8, 2023. Lead counsel sent correspondence to Mr. Vo informing him that a motion to withdraw would be forthcoming unless counsel heard back from Mr. Vo. In addition, counsel advised Mr. Vo of the potential consequences if this Motion is granted. To date, Mr. Vo has not responded to counsel's communications. *See* Rule 1.16(b)(5) & (6). Counsel do not have Mr. Vo's phone number and do not know his physical whereabouts. Counsel do not know of any other person capable of locating Mr. Vo.

Second, this case is in a very early stage of litigation. Plaintiff's motion for leave to file an Amended Complaint was granted and a response to the Amended Complaint is now due May 17, 2023. No dispositive motions are pending, no discovery has taken place and no trial has been set. *See* Rule 1.16(b)(1).

Third, as to the delay in the resolution of the case that could result from withdrawal, the Court does not face a circumstance where granting withdrawal would directly impact pending litigation events. No dispositive motions are pending, and trial has not yet been set. *See Sharp*, 2012 WL 6212615, at *5 (allowing

withdrawal in case where trial had not been set and party had sufficient time to locate substitute). Accordingly, this factor favors withdrawal.

Finally, for similar reasons, granting withdrawal would not impact the efficient administration of justice in this case. *See id.*, 2012 WL 6212615, at *5 (allowing withdrawal at an early stage during the litigation even though it was “difficult to know with certainty” how soon the affected party would find substitute counsel).

Should the Court require further explanation regarding counsel’s justifications for requesting withdrawal in this case, the undersigned can submit an *ex parte* communication and/or certification to the Court.

CONCLUSION

Based on the foregoing, good cause exists for this Court to grant leave to Bayard P.A. to withdraw as counsel for Mr. Vo.

Respectfully submitted,

/s/ Ronald P. Golden III

Brett M. McCartney (#5208)

Elizabeth A. Powers (#5522)

Ronald P. Golden III (#6254)

BAYARD, P.A.

600 North King Street, Suite 400

Wilmington, Delaware 19801

(302) 655-5000

bmccartney@bayardlaw.com

epowers@bayardlaw.com

rgolden@bayardlaw.com

*Counsel for Defendants VBit
Technologies Corp. and VBit Mining
LLC*

Dated: June 28, 2023

CERTIFICATE OF COMPLIANCE

Pursuant to Judge Connelly's November 10, 2022 Standing Order Regarding Briefing in All Cases, the undersigned certifies that the attached document complies with the type and number limitations. The total number of words, including introduction and footnotes, but excluding the cover page and signature page is 1126 words, according to the word processing system used to compile the brief. The text of the brief is 14-point, Times New Roman.

/s/ Ronald P. Golden III
Ronald P. Golden III (#6254)

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Renewed Motion for Leave to Withdraw as Counsel, Opening Brief in support, and Declaration thereto were served on the following on June 28, 2023:

Sally Elaine Veghte
Klehr, Harrison, Harvey, Branzburg & Ellers
919 Market Street, Suite 1000
Wilmington, DE 19801

Travis Steven Hunter
Griffin Schoenbaum
RICHARDS, LAYTON & FINGER
920 North King Street
Wilmington, DE 19801

Danh Cong Vo
919 N. Front Street, Unit F
Philadelphia, PA 19123
Electronic Mail: kennyu77@gmail.com

Mr. Sean Tu
1390 Braun Court
Eagan MN 55123
Telephone: (612) 888-0068
Electronic Mail: Saj.tu@outlook.com

VBit Technologies Corp.
1625 Washington Ave.
Philadelphia, PA 19146

VBit Technologies Corp.
c/o LegalInc Corporate Services, Inc.
651 N. Broad Street, suite 201,
Middletown, DE 19709

Lillian Zhou
l.zhou@vbittech.com

VBit Mining LLC
1625 Washington Ave.
Philadelphia, PA 19146

VBit Mining LLC
c/o LegalInc Corporate Services, Inc.
651 N. Broad Street, suite 201,
Middletown, DE 19709

Lillian Zhou
l.zhou@vbittech.com

/s/ Ronald P. Golden III

Ronald P. Golden III (No. 6254)